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MEMORANDUM OF LAW

DATE: August 1, 2000
TO: Honorable Mayor and Members of the City Council
FROM: City Attorney
SUBJECT: Validity of Proposal for Library Appropriation Ballot Measure

INTRODUCTION

Proponents of a measure that would require the City Council annually to appropriate an increasing amount of the general fund for library purposes did not obtain the requisite number of signatures to qualify their initiative for the ballot. They have now asked the City Council to use its own initiative power to place their measure on the ballot of November 7, 2000, as a "People's Ordinance."

The City Council has requested this Office's opinion regarding the legality of the People's Ordinance. Also addressed is the legality of alternative measures that would recognize the proponents' desire for increased funding for library services.

QUESTIONS PRESENTED

Is the People's Ordinance a permissible way to prioritize funding for library services?
What ballot measure could legally require a higher funding priority for the City library services?

SHORT ANSWERS

A ballot measure attempting to appropriate money for library services, such as the proposed People's Ordinance, may violate both the Charter and state law. There is no settled law on the subject, but analogous principles arguably establish that appropriation of funds may not be

accomplished by the initiative power. A ballot measure or other ordinance, however, giving high priority to City funding for library services may be valid so long as the Council retains the ultimate control over the City's budgetary decisions.

DISCUSSION

A. General Legal Principles: Limits of the Initiative Power

The initiative power reserved by the people is liberally construed, and all reasonable doubts must be construed in favor of the people's exercise of that power. *Rossi v. Brown*, 9 Cal. 4th 688, 711 (1995). However, the initiative may not be used where the inevitable consequences would be to impair or destroy the ability of the local legislative body to perform an essential governmental function. *Simpson v. Hite*, 36 Cal. 2d 125, 134 (1950). Management of local government's financial affairs is an essential governmental function. *Rossi v. Brown*, 9 Cal. 4th at 703; *Geiger v. Board of Supervisors of Butte County*, 48 Cal. 2d 832, 840 (1957).

Thus, the initiative may not be used in a manner which interferes with a local legislative body's responsibility for fiscal management. *Carlson v. Cory*, 139 Cal. App. 3d 724, 731 (1983), citing *Birkenfeld v. City of Berkeley*, 17 Cal. 3d 129, 143-144 (1976). Any proposal to give a high priority to library services may be valid so long as it adheres to this fundamental principle.

B. Options to Increase Library Funding

1. An Alternative to the Current Proposal: Charter amendment to section 11.1 making library funding a priority along with police services; accompanied or not by a Municipal Code section or Council Policy expressing voters' intent that the priority be reflected where possible by appropriation of 6% of the general fund to carry out this priority

Existing Charter section 11.1 (a copy of which is attached to this Memorandum as Exhibit 1) expressly provides that "[T]he Council shall give priority in the funding of municipal services to the need of the citizens for police protection in considering adoption of this salary ordinance and the annual budget ordinance." Without impairing the ability of the Council to fund the City's essential functions, this Charter amendment, passed in 1980, expresses the desire of the citizens of San Diego to have police functions well funded. The section could be amended by a vote of the people, to add library operation, maintenance, and supplies as additional priorities.

The history of this Charter section 11.1 is instructive. In 1980, there were competing ideas within the City on how to place a higher priority on the City's funding for police protection.

Recognizing that the City Council, as the taxpayers' elected representatives, should retain control over the City's basic budgetary decisions, this Charter section states that the Council should give budget priority to police protection. The measure passed by a vote of 135,096 in favor to 90,720 opposed – 59.8% of the votes cast were in favor.

An amendment adding library services to this Charter section would be legal. In this fashion the will of the electorate is expressed without impairing the City Council's ability to manage the finances of the City and fund the myriad of services it must provide.

2. The Current Proposal: Charter amendment allowing voters to directly exercise appropriation power

The goals of the proposed Ordinance in the Charter would most directly be accomplished if section (b) is added Charter section 71. This new section would state that, notwithstanding any other provision of the Charter, an annual appropriation of at least 6% of the general fund shall be made for the provision of library services in the City, including the operation, maintenance, and supply of the libraries in the San Diego Library System. The minimum amount to be appropriated would be fixed at 6%, or graduated from 4.5% to 6% as set forth in the existing proposal.

Unfortunately for the Ordinance proponents, this kind of amendment could be found to impermissibly and adversely impair essential functions of local government. First, the Ordinance would result in direct electorate control over fiscal decisionmaking, which has been found to be an essential function of the local legislative body. Second, the fiscal constraint imposed by this Ordinance may be negatively viewed by the rating agencies and bond market. Finally, if the Council places the ordinance on the ballot by its own initiative, that action alone may be construed as an improper delegation of powers these elected officials are required to exercise. For these reasons, we do not recommend placing the proposal on the ballot as a Charter amendment.

a. Impairment of Essential Functions

The appropriation responsibility lies at the heart of the City Council's fiscal authority. The proposal would remove that responsibility entirely from the Council, with respect to 6% of the general fund. Analysis of the consequences of this action is "proper and important" to ascertain whether the action is properly within the scope of the initiative power. *Hunt v. Mayor & Council of the City of Riverside*, 31 Cal. 2d 619, 628-629 (1948). The consequences that can be expected to flow from this action illustrate why a court could find the action invalid.

As the San Diego County Taxpayers' Association's letter in opposition points out, this proposal, if placed on the ballot, will be followed by others in future election cycles. In that event, future election cycles would likely see competing proposals that might appropriate more than 100% of the budget. Assuming such conflicting electoral results could be harmonized, so that only 100% of the budget had been appropriated, the likelihood remains that insufficient funds would be left to the discretion of the elected Council, to satisfy all of the charter-mandated and otherwise essential governmental functions.

The Charter lists several functions that are the "obligation and responsibility" of the City. These services and functions include public works, water, building inspection, public health, park and recreation and libraries (Charter, §26.1), plus services provided by a city clerk, city auditor, city attorney, personnel director, police and fire chiefs, and various financial management professionals and staff. As a practical matter, it is unlikely that less-popular or less-visible (but still essential) functions would ever be the beneficiary of a voter-initiated appropriation, leaving the City with unfunded essential functions.

The City's reserve for liability could also be impermissibly impacted by popularly-determined appropriation. An involuntary obligation, such as a judgment adverse to the City, cannot be subject to a charter or constitutional provision. See, e.g., *F & L Farm Co. v. City Council of City of Lindsay*, 65 Cal. App. 4th 1345, 1351-1352 (1998). If the electorate appropriates all or most of the general fund without providing or leaving a sufficient amount of money for such judgments, the City would have to violate the voter-appropriated amounts for other services, in order to satisfy a lawful judgment or other unavoidable obligation.

Recent case law gives the people's power of initiative a broad reach. For example, in *Rossi v. Brown*, 9 Cal. 4th 688 (1995), the California Supreme Court upheld an initiative that would prospectively repeal a local tax. The Court recognized that managing the fiscal affairs of local government is "an essential function", and acknowledged the continuing validity of its previous holdings in *Simpson* and *Geiger*. However, the Court then found no impairment of an essential function resulted from the prospective repeal of a tax because the local legislative body would know in advance of the potential for reduced revenues and could plan accordingly; thus, the legislative body's ability to manage its fiscal affairs was not disrupted. *Rossi v. Brown*, 9 Cal. 4th at 703-704.

The *Rossi* Court noted that an initiative repealing a tax could be found to impermissibly interfere with fiscal management if, for example, it "eliminates a major revenue source and no other revenue source is available that may be tapped to offset a resulting budget deficit or to avoid future deficits." 9 Cal. 4th at 710. Appropriations initiatives could, as illustrated above, ultimately result in the elimination of revenue for any number of essential functions without leaving the City Council a means for raising the necessary revenue from other sources.

The proponents of this measure attempted to address the need for re-appropriation, in adopting the kind of “emergency” exception found in existing Charter section 73. However, most of the basic functions of local government are not needed only in emergencies; they are integral parts of the everyday functioning of the City. Accordingly, this exception does not remedy the impermissible impact of direct voter appropriation on the City Council’s ability to function.

b. Impact on the City’s Credit Rating

Another potentially adverse effect would be the reaction of the bond market and rating agencies. Any time the power of the local government to control its finances is impaired, there is the threat of a ratings downgrade. For example, the rating for the City was downgraded after the passage of Proposition 218 — not based on any actual evidence that the City would have more difficulty meeting its obligations because of the measure, but simply by virtue of the perception that the measure would make it harder for the City to do so.

c. Prohibited Delegation of Powers

One further potential legal infirmity lies in the nature of the proposed initiative. This proposal did not secure sufficient signatures to be placed on the ballot by the people; thus, if it is placed on the ballot, it must be done by the Council on their own motion. Arguably, this action — as opposed to an initiative that qualifies on its own under applicable law — is a delegation of a “legislative power or responsibility which [the Council] was elected to exercise,” which is expressly prohibited by existing Charter section 11.1. That section, too, would have to be amended to delete this prohibition, either exclusively for library purposes or as a general matter, to allow this initiative to be valid.

3. Legality of Proposal as an Ordinance

The powers, obligations, and rights bestowed or declared by the state constitution may not be amended, modified, or derogated by statute, whether adopted by legislation or initiative. *FPFC v. Cal. State Personnel Board*, 77 Cal. App. 3d 52 (1978). A charter has the same relationship to a charter city as the state constitution has to the state. *Currieri v. City of Roseville*, 4 Cal. App. 3d 997 (1970). Thus, an ordinance cannot override contrary provisions of a city charter. In this case, the proposal, in ordinance form, would attempt to alter the Charter-prescribed powers and obligations of the City Council with respect to its control over appropriations of the general fund, in a manner inconsistent with Charter sections 11.1 and 71. Such an ordinance would not be effective.

CONCLUSION

An initiative that expresses the will of the voters to place a higher budgetary priority on library funding will be valid as long as it does not impermissibly impair the Council's ability to exercise its budgetary authority to provide for all of the essential governmental services and functions. Library services may be added to existing Charter section 11.1 to express to the City Council, as the voters did in 1980, their will regarding the City's budget priorities. If the Council wishes to place an initiative before the voters, the City Attorney recommends that the Council propose an amendment to Charter section 11.1. Alternatively, the Council may place the People's Ordinance, the 6% appropriation measure, on the ballot, but the measure will likely be subject to a legal challenge that could result in invalidation of the measure.

CASEY GWINN, City Attorney

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By

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cc: City Manager
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